

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

GARY WARD,

Plaintiff,

v.

CIVIL ACTION NO. 5:04-cv-01310

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER


This action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court grant the plaintiff's motion for judgment on the pleadings, deny the defendant's motion for judgment on the pleadings, vacate the final decision of the Commissioner, and remand this case for further proceedings pursuant to the fourth sentence of 42 U.S.C. § 405(g).

Neither party has filed objections to the Magistrate Judge's findings and recommendation.

Accordingly, the court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge. The court **GRANTS** the plaintiff's motion for judgment on the pleadings, **DENIES** the defendant's motion for judgment on the pleadings, **VACATES** the final decision of the Commissioner, and **REMANDS** this case for further proceedings pursuant to the fourth sentence of 42 U.S.C. § 405(g).

The court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: March 17, 2006



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE